



REPUBLIC OF KENYA



**Edewa v Republic (Criminal Petition E006 of 2022)  
[2023] KEHC 20040 (KLR) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20040 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL PETITION E006 OF 2022  
WM MUSYOKA, J  
JULY 17, 2023**

**BETWEEN**

**ALFRED TINGI EDEWA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The undated application filed herein, seeks re-sentencing. The petitioner had been convicted in Busia CMCCRC No 667 of 2005, on 3 counts of robbery with violence, and was given the mandatory death penalty. His appeals, in Bungoma HCCRA No 39 of 2006 and Kisumu CACRA No 659 of 2010, were not successful. The petitioner has not indicated whether he has benefited from commutation of the death sentence, by the President of the Republic of Kenya, to life imprisonment.
2. The application, no doubt, rides on the decision in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ), where the court appeared to lay down a general principle that all mandatory sentences were unconstitutional, and to allow trial and appellate courts discretion to re-visit cases where mandatory sentences had been imposed, with a view to revising or reviewing them. The Supreme Court has since re-visited the issue in *Francis Karioko Muruatetu & another v Republic; Katiba Institute & 5 others (amicus curiae)* [2021] eKLR (Koome CJ&P, Mwilu DCJ&VP, Ibrahim, Wanjala, Njoki, Lenaola & Ouko, SCJJ), and clarified that its decision in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ) was of application only in murder cases, and not any other.
3. However, the current jurisprudence points to entertainment and tolerance of applications for review of sentence, where the trial court imposed a mandatory sentence, in circumstances where the law did not allow any discretion. The offence, that the petitioner was convicted in respect of, attracts one such



sentence, as emerged from the judgments pronounced in Busia CMCCRC No 667 of 2005, Bungoma HCCRA No 39 of 2006 and Kisumu CACRA No 659 of 2010.

4. As the death sentence has been pronounced unconstitutional, by all levels of superior courts, it then stands that the sentence imposed on the petitioner herein is no longer tenable. I hereby set it aside.
5. Subsequent to setting aside that sentence, I have to consider the alternative sentence that I should impose. The offence of robbery with violence is a felony, so grave that the Republic assigned to it the ultimate penalty, death. The consequences of violent robbery are grave. It can lead to deaths or maiming of victims. It strikes terror to communities, and the Republic has a responsibility to ensure that all are safe and secure within the borders. For anyone convicted of robbery with violence, imprisonment ought to be the alternative to death.
6. I note from the trial record that the violence employed by the petitioner and his accomplices was directed more at property, rather than towards their victims. No one was assaulted, and no one got injured, although the petitioner and his accomplices were armed with pangas, hammers and clubs. The level of violence visited on the victims was low, although they struck terror in the hearts of the local community. Simple robbery attracts a maximum sentence of 14 years, according to section 296(1) of the *Penal Code*, cap 63, Laws of Kenya. The sentence to be imposed for robbery with violence should logically be more than 14 years. Consequently, I shall, and do hereby, impose an imprisonment sentence on the petitioner of 25 years. The time he spent in custody shall be reckoned. Plea was taken on April 6, 2005, while conviction and sentence were on March 28, 2006 . Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 17TH DAY OF JULY 2023**

**WM MUSYOKA**

**JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Appearances**

**Alfred Tingi Edewa, the petitioner, in person.**

**Mr. Mayaba, instructed by the Director of Public Prosecutions, for the respondent.**

